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No. 18

In the Supreme Court of the United States

OCTOBER TERM, 1951

PETER ALFONS BINDCZYCK, PETITIONER

v.

THOMAS G. FINUCANE, INDIVIDUALLY AND AS CHAIRMAN OF THE BOARD OF IMMIGRATION APPEALS, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS

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OPINION BELOW

The opinion of the Court of Appeals (R. 23–32) is reported at 184 F. 2d 225.

JURISDICTION

The judgment of the Court of Appeals (Clark, Miller, and Proctor, JJ.) was entered on June 19, 1950 (R. 33). A petition for rehearing before the full court (R. 34–44) was first denied by the same panel on September 28, 1950 (R. 45). The order denying the petition was vacated by the court *sua sponte* on November 21, 1950 (R. 47),

and on December 21, 1950, the petition for rehearing was denied by the court *en banc* (R. 48). The petition for a writ of certiorari was filed on March 15, 1951, and was granted on April 30, 1951. The jurisdiction of this Court rests on 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether Section 338 of the Nationality Act of 1940, authorizing proceedings for denaturalization, abridges the inherent and historical power of a state court of record to vacate and set aside, for good cause, its own naturalization decree issued within the same term of court.

2. Whether the order of the state court vacating its prior naturalization decree should have been disregarded on the ground that it was entered in violation of due process.

STATUTE INVOLVED

Section 338 of the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U. S. C. 738, provides in pertinent part as follows:

> (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and can-

celing the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

(b) The party to whom was granted the naturalization alleged to have been fraudulently or illegally procured shall, in any such proceedings under subsection (a) of this section, have sixty days' personal notice in which to make answer to the petition of the United States; and if such naturalized person be absent from the United States or from the judicial district in which such person last had his residence, such notice shall be given by publication in the manner provided for the service of summons by publication or upon absentees by the laws of the State or the place where such suit is brought.[1]

STATEMENT

On December 2, 1943, petitioner, then a German alien, while a soldier in the United States Armed Forces stationed at Camp Ritchie, Maryland, filed a petition for naturalization. A hearing was had on the same day in the Circuit Court of Frederick County, Maryland, at which a group of 80 applicants (R. 14), including petitioner, appeared and were "asked the usual questions" as to their belief in the American form of government and

[1] These provisions are a re-enactment in substantially the same terms of Section 15 of the Act of June 29, 1906, 34 Stat. 601.

willingness to bear arms. (R. 17). Petitioner testified under oath that, among other things, he believed in the form of government of the United States and was willing to bear arms against all its enemies. (R. 17–19). Necessarily, he also took the oath required by § 335 (b) of the Nationality Act as a condition to naturalization:

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God.

Thereupon he was, on the same day, admitted to United States citizenship by the Circuit Court of Frederick County, Maryland, and was issued a certificate of naturalization by that court (R. 17–19, 23).[2]

On December 3, 1943, after learning that he had received a promotion and had been alerted

[2] Apparently these proceedings were had pursuant to § 324 of the Nationality Act of 1940, which permits aliens who have served three years in the armed forces to be naturalized "immediately" upon the filing of the petition, without waiting the 30 days prescribed by § 334 and without filing a certificate of arrival showing his lawful entry into the United States (see § 329) or a declaration of intention (see § 331).

for overseas duty (R. 12–16), petitioner made statements to the Post Intelligence Officer disclaiming his loyalty to the United States, and also stated that he was unwilling to bear arms for this country and did not desire to remain here after the war was over (R. 14–15, 17–18). On December 9, 1943, seven days after petitioner's naturalization, and within the same term of the Circuit Court,[3] the United States Naturalization Examiner, on behalf of the United States, filed in the naturalization proceeding a motion to vacate the order of December 2 admitting petitioner to citizenship (R. 13; see also R. 23–24). The same day, notice of this motion was served on petitioner, who was then under military arrest (R. 17, 24). A special hearing on

[3] Art. IV, Sec. 21 of the Maryland Constitution provides: "* * * The said judges shall hold not less than two terms of the Circuit Court in each of the counties composing their respective circuits, at such times as are now or may hereafter be prescribed * * *."

Sec. 72, Article 14, Code of Public Local Laws of Maryland (Chap. 9, Acts of Gen. Assembly of Maryland, 1931) provides in parts as follows:

"The Circuit Court for Frederick County shall hold four terms of court for common law proceedings, commencing respectively on the third Monday in February, on the second Monday in May, on the third Monday in September, and on the second Monday in December in each and every year * * *."

The September Term, 1943, for Frederick County Circuit Court, began on September 20, 1943, and ended on December 13th, 1943. Consequently, December 2d, and 9th, the respective dates on which the proceedings herein were had, were within the September term of the court.

the motion was had on the same day (R. 13–19), at which petitioner admitted that when he testified under oath during the naturalization proceeding that he approved of this Government and would fight for this country, he "swore falsely" (R. 18–19). Petitioner testified, in part, as follows (R. 18–19):

> By Mr. Cook [Naturalization Examiner]:
>
> * * * * * *
>
> Q. This affidavit clearly sets forth your opinion, is that correct?
>
> A. Yes.
>
> Q. You do not wish to change that statement in any way?
>
> A. Could I read it once more, please? (Referring to paper marked Exhibit B.) When I said here that—"and wish to go back to Germany after the war," I supposed that Germany will have a different government, and not the same Nazi government.
>
> Q. That is presumed to be true, but the affidavit sets forth your feelings that you do wish to return to Germany, is that correct?
>
> A. Not necessarily. I have my choice. I mean if I don't want to fight for this country I can't expect to remain in this country, and the country I came from is Germany. That is why I mentioned Germany here.
>
> Q. You definitely do not wish to fight for the United States, is that correct?

A. No, that is correct.

Q. When you were here on December 2, 1943 and filed your petition, did you feel the same way at that time?

A. Yes.

Q. How long before had you felt that way?

A. I have felt that way for several weeks, but I mean it just didn't pop up that way.

Q. You felt that way when you came in here and filed the petition on the morning of December 2, 1943, is that correct?

A. Yes.

Q. (The COURT) Did I understand you to say you did swear that you approved of this Government and that you would fight for this country?

A. While I was in Court here, yes, sir.

Q. You were swearing falsely at that time?

A. Yes, sir.

Q. (Mr. COOK) Is there anything further you wish to say in this matter?

A. Well, the reason why I swore falsely is because that some people have had me before and while I was an alien, and I figured that these people were nice people and I didn't want to bring them any trouble. While I was an enemy alien, I figured being I was made a citizen would sort of break up the connections between these people and me, because in a way they were sponsors for me, because one of the

witnesses who was my sponsor and many other people signed statements about me, about my character and so on.

Q. (The COURT) Is that all?

A. Yes, sir.

At the conclusion of the hearing on December 9, 1943, the Circuit Court entered an order reciting that its order of December 2 admitting petitioner to citizenship "is hereby vacated and set aside," and that "the original and duplicate certificate of naturalization * * * be voided and returned to the Immigration and Naturalization Service" (R. 19–20). Petitioner did not appeal from that order.

On June 15, 1948, while in custody of the Department of Justice after having been ordered deported, petitioner filed in the District Court for the District of Columbia a complaint praying for a judgment declaring him to be citizen of the United States. He asserted that the order of the Maryland Circuit Court vacating its prior order admitting him to citizenship was void because it was not issued in conformity with the requirements of Section 338 of the Nationality Act of 1940 (R. 2–9).

Respondents moved to dismiss the complaint on the ground that it failed to state a cause of action (R. 11), and petitioner moved for summary judgment (R. 20). Petitioner's motion was granted and judgment was entered declaring him

"to be a national and citizen of the United States" (R. 20–21).[1]

On appeal by respondents, the Court of Appeals reversed the judgment, holding that Section 338 of the Nationality Act of 1940 should not be construed as cutting off, with respect to naturalization judgments, "the inherent and historical power of a court over its own judgments within the same term in which they were rendered" (R. 33). It accordingly remanded the cause with instructions to dismiss the complaint (R. 33).

SUMMARY OF ARGUMENT

I

A. Since the foundation of our federal system of Government, naturalization has been a judicial function, surrounded with all the normal incidents of a judicial proceeding. *Tutun* v. *United States*, 270 U. S. 568. Whenever a question of practice has arisen on which the naturalization statute is silent, the courts have held that the proceeding is governed by the normal rules of practice obtaining in the court in which the proceeding was brought.

B. From the beginnings of the common law to the present, a normal incident of judicial power

[1] The order further stated that it was "without prejudice to the government's right to institute appropriate proceedings for denaturalization under Sec. 338 of the Nationality Act of 1940 (8 U. S. C. 738)."

in English and American jurisdictions has been the general rule that all judgments, decrees or other orders of a court are under its absolute control during the term in which they are rendered. *Bronson* v. *Schulten*, 104 U. S. 410, 415. The plenary power of a court during term time to reconsider its judgments for any reason has always been considered totally different in character and scope from its very limited authority to correct or revoke a judgment after expiration of the term on certain specific grounds. See *United States* v. *Mayer*, 235 U. S. 55, 61. Relief during term time is deemed merely a continuance of the proceeding which gave rise to the original judgment. The term rule has been abolished in some jurisdictions; thus in the federal courts the continuance or expiration of the term has no effect on the court's power over its judgments, and the present equivalent of a court's unlimited power during the term would seem to be its power to entertain a motion for new trial within 10 days after entry of judgment. The courts of Maryland, however, where petitioner's application for naturalization was brought, adhere to the term rule. They deem the action of a court during term time so much a part of the original proceeding that an order setting aside a judgment during the term is not appealable as a final order, whereas an order revoking a judgment after term time is regarded as final and

appealable. *North* v. *Town Real Estate Corp.*, 60 A. 2d 665 (Md., 1948).

So firmly established is the rule that a court has absolute control of its judgments during term time, that only a very clear expression of intent has been deemed sufficient to work an alteration or abregation of the rule. Thus, rules of court specifying the time within which a petition for rehearing or for a new trial may be filed do not deprive the court of jurisdiction to vacate its judgment during the term. Hence, absent any clear expression of a contrary intention in the naturalization law, it is clear that the normal judicial power of the Maryland court to control its judgment during term time would pertain to petitioner's naturalization proceeding.

C. Neither the language nor the legislative history of the denaturalization statute reveal an intent to alter or abridge the power of the courts to control their judgments during the term. The statute on its face relates to a separate independent proceeding which could be brought, for specified causes, after the judgment of naturalization has become final and in a court other than that in which the judgment was rendered. The legislative history sheds no light on the question of the extent to which Congress intended the provisions of the denaturalization section to be exclusive. All that can be said with certainty is that Congress revealed no clear intention to alter or

abridge the established power of courts to control their judgments during term time. Since the Nationality Acts of 1906 and 1940 continued to rely on state as well as federal courts to perform the function of naturalization, the statutes show that Congress did not intend that the procedures for naturalization be uniform in every detail. Hence statements that the statute was intended to provide a uniform rule of naturalization are of no significance with respect to the specific issue involved in this case. The legislative history does reveal that Congress was aware of the fact that certificates of naturalization were being cancelled by federal courts without statutory authority before 1906. Since such cancellation was normally obtained by independent suits in equity or by motions in the nature of equitable relief after expiration of the term, it is reasonable to assume that the term rule and its possible application to cancellation of certificates of naturalization were not in the minds either of the framers of the statute or Congress.

In *Tutun* v. *United States*, 270 U. S. 568, this Court held that a judgment of naturalization was appealable despite the absence of a statutory provision for appeal on the grounds that naturalization is a judicial function and appeal is part of the normal judicial process. That decision also recognized that appeals in proceedings brought in the state courts lie to state appellate courts. The decision therefore necessarily has

two corollaries: (1) that a judgment of a court of first instance ordering naturalization is not final when rendered but may be negated by a judicial process other than that set forth in Section 338 of the Nationality Act; and (2) that the procedure by which such negation may be achieved may vary with the forum selected for naturalization. The control by a court of its judgments during term time is as recognized a normal part of the judicial process as the right of appeal. Since there is no evidence of any Congressional intention to alter or abridge the term rule, the reasoning of the *Tutun* decision requires a holding that the courts' established power to control their judgments during term time was unaffected by the denaturalization provisions of the Nationality Acts of 1906 or 1940.

II

If, as we contend, the Maryland court had jurisdiction to reconsider its order, any question as to the propriety of the proceedings before it should have been presented in that court or on appeal from its decision. Since the Maryland court had jurisdiction of the parties and the subject matter, its decision is not open to collateral attack. *Spratt* v. *Spratt*, 4 Pet. 393. In any event, the proceedings were in full conformity with the Nationality Act. Once the original judgment had been vacated in order that the court might consider additional evidence, it was

proper for the court to proceed as on original application for naturalization. In such a proceeding, the Nationality Act merely requires a hearing in open court, which petitioner here obtained. Since the proceeding was a civil one, petitioner had no right to be furnished counsel. And petitioner had the burden of satisfying the court that he was eligible for naturalization, a burden which he plainly failed to meet. Petitioner made no request for postponement of the hearing. His testimony amounted to a deliberate abandonment of his application for naturalization and was made with explicit recognition that it would probably result in his being required to leave the United States. Such a deliberate choice would not have been set aside even in a proceeding in the same court after judgment had become final. *A fortiori*, it cannot afford the basis for a collateral attack in a different court.

ARGUMENT

I

IN ENACTING SECTION 338 (a) OF THE NATIONALITY ACT OF 1940 GOVERNING INDEPENDENT PROCEEDINGS FOR DENATURALIZATION, CONGRESS DID NOT INTEND TO ABRIDGE THE HISTORIC POWER OF A STATE COURT OF RECORD TO EXERCISE ABSOLUTE CONTROL OF ITS JUDGMENTS, INCLUDING JUDGMENTS OF NATURALIZATION, WITHIN THE TERM IN WHICH THEY WERE RENDERED

The question presented here is a very narrow one. This case is not concerned with the procedures available for setting aside, on grounds of

fraud or illegality, a judgment of naturalization which has become final. For present purposes we may assume *arguendo*, although the prevailing view appears to be to the contrary,[5] that once a judgment of naturalization has become final, it may be set aside only by the procedure established in § 338 of the Nationality Act. The issue here, however, is a very different one; it is simply whether the normal rule of a state court as to the time when its judgments become final is applicable to naturalization judgments.

Maryland, like many other jurisdictions, applies the common-law rule that a judicial judgment does not acquire complete finality until the end of the term at which it is rendered. During the term, the judgment is treated as within the bosom of the court, and as subject to modification or vacation, not merely for fraud or illegality, but

[5] A number of courts have treated § 338, or its predecessor § 15 of the 1906 Act, as merely cumulative, adding a new remedy without cutting off any existing remedy. See *In Re Macoluso's Naturalization*, 237 Pa. 132, 85 Atl. 149 (1912); *Petition of Weltzien*, 68 F. Supp. 1000 (S. D. N. Y.); *United States* v. *Orens*, 13 F. 2d 376 (C. A. 4); *United States* v. *Aakervik*, 180 Fed. 137 (D. Ore.); opinion below, R. 32. Contra, *United States ex rel. Volpe* v. *Jordan*, 161 F. 2d 390 (C. A. 7). Compare, *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, 246: "Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants."

As the court below pointed out (R. 26) the other cases cited by petitioner at p. 17 of his Brief have nothing to do with this question. They merely hold that where the Government proceeds under Section 338 it must comply with that section.

for any ground bearing upon its correctness as a matter of fact or law. The Maryland court applied that rule here. On December 2, 1943, petitioner and 79 others filed petitions for naturalization and were admitted on the same day to citizenship after what was apparently a very brief examination in open court. The following day, petitioner made statements to his Army superiors inconsistent with his testimony in open court and with the naturalization oath to which he swore. A week after the first hearing, a motion was filed calling these statements to the court's attention; the motion was duly served on petitioner and he was present in court at a further hearing. On the basis of the additional evidence thus presented to it, including petitioner's testimony in open court, the court concluded that it had erred in granting naturalization in this one case, and, accordingly, set aside its previous order and voided the previously issued certificate of naturalization. All this was done within the term in which the original order was entered. The narrow question here is whether anything in the Nationality Act precluded the court from exercising as to this naturalization judgment its normal power to reconsider any judgment within the term in which it was granted and to set it aside if it appeared for any reason that it should not have been rendered.

A. *Naturalization is a judicial function with all the incidents of a normal judicial proceeding.*—

Since the time that Congress first undertook to exercise its constitutional power "to establish an uniform Rule of Naturalization" (Art. 1, Sec. 8, cl. 4), aliens have been admitted to citizenship through the courts. From the beginning, Congress has relied upon state as well as federal courts for that purpose. The first naturalization act (Act of March 26, 1790, 1 Stat. 103), authorized "any common law court of record, in any one of the states" to admit aliens having two years' residence to citizenship. Then followed a series of naturalization laws re-enacting substantially, with amendments as to qualifications for citizenship, the major provisions conferring upon the federal and state courts of record having common-law jurisdiction, authority to naturalize aliens.[6] By Sections 3 and 4 of the Act of June 29, 1906 (34 Stat. 596), the courts permitted to confer citizenship were designated as United

[6] Act of January 29, 1795 (1 Stat. 414); Act of June 18, 1798 (1 Stat. 566); Act of April 14, 1802 (2 Stat. 153), (main source of the naturalization system up to 1906) as amended by Act of March 26, 1804 (2 Stat. 292), Act of March 3, 1813 (2 Stat. 809, 811), Act of July 30, 1813 (3 Stat. 53), Act of March 22, 1816 (3 Stat. 258, 259), Act of May 26, 1824 (4 Stat. 69), Act of May 24, 1828 (4 Stat. 310), Act of June 26, 1848 (9 Stat. 240), Act of February 10, 1855 (10 Stat. 604), Act of July 17, 1862 (12 Stat. 597), Act of April 9, 1866 (14 Stat. 27) (excluding Indians not taxed from citizenship), Act of July 14, 1870 (16 Stat. 254, 256), Act of June 7, 1872 (17 Stat. 262, 268), Act of February 1, 1876 (19 Stat. 2), Act of February 8, 1887 (24 Stat. 388, 390); Act of March 3, 1893 (27 Stat. 612, 645), Act of July 24, 1894 (28 Stat. 123, 124), and Act of March 3, 1903 (32 Stat. 1213, 1222).

States courts and state courts of record "having a seal, a clerk, and jurisdiction in actions at law or equity, or law and equity, in which the amount in controversy is unlimited." Such courts still have the power to naturalize (Act of October 14, 1940, Sec. 301, 54 Stat. 1140, 8 U. S. C. 701).

Naturalization is thus a judicial function[7] and a naturalization proceeding has all the incidents of a regular judicial proceeding. *Tutun* v. *United States,* 270 U. S. 568, 576–578; *United States* v. *Macintosh,* 283 U. S. 605, 615; *Levin* v. *United States,* 128 Fed. 826, 829–831 (C. A. 8). "The proceeding is instituted and is conducted throughout according to the regular course of judicial procedure". *Tutun* v. *United States, supra,* at 577. For that reason, a judgment of naturalization is entitled to the same freedom from collateral attack as any other judgment of a court. *Spratt* v. *Spratt,* 4 Peters 393, 408. Similarly, when a question of practice has arisen on which the naturalization statute is silent, the courts have held that the proceeding is governed by the normal rules of practice obtaining in such court. Thus in *Tutun* v. *United States,* 270 U. S. 568, 579, this Court held that, although the naturaliza-

[7] Under our constitutional system, no other conclusion is possible for, as was pointed out in 1792 in *Hayburn's Case,* 2 Dall. 409, 410, "neither the legislative nor the executive branches, can constitutionally assign to the judicial any duties, but such as are properly judicial, and to be performed in a judicial manner." See *also Tutun* v. *United States,* 270 U. S. 568, 576.

tion statute made no provision for appeal, a judgment denying naturalization was appealable under the general statute governing appeals in all cases. Similarly, state appellate courts have held that judgments of lower state courts, both granting and denying naturalization, are appealable to state appellate tribunals, as part of the normal judicial process. *In re Clarke,* 301 Pa. 321, 152 A. 92 (1930); and see cases cited in *Tutun* v. *United States,* 270 U. S. at p. 575, fn. 3. The Federal Rules of Civil Procedure are applicable to naturalization proceedings in federal courts to the extent that the statute does not otherwise provide. Rule 81 (a) (2); *Application of Murra,* 166 F. 2d 605, 607 (C. A. 7) (Rule 52, requiring the District Court to make findings of fact and conclusions of law);[*] *Petition of Weltzien,* 68 F. Supp. 1000 (S. D. N. Y.) (Rule 59, motion for a new trial); *Application of Levis,* 46 F. Supp. 527 (D. Md.) (Rule 60 (a), correction of clerical error); *Petition of Rudder,* 159 F. 2d 695, 696 (C. A. 2) (Rule 75 (h), contents of record on appeal). State courts have likewise held that their rules of practice, including rules governing the right to correct judgments for clerical errors, are applicable to naturalization proceedings. *Matter of Wolton,* 125 Misc. 564,

[*] See also *In Re Jow Gin,* 175 F. 2d 299 (C. A. 7); but see *Wixman* v. *United States,* 167 F. 2d 808, 810 (C. A. 9), reversed, 335 U. S. 874.

211 N. Y. Supp. 501 (1925); *Santasino* v. *Karnuth*, 41 N. Y. Supp. 2d 459 (1943).

B. *A court's absolute control of its judgment during term has for so long been considered part of the judicial process of rendering the initial judgment that only a very clear expression of intent is deemed sufficient to take away or abridge such power.*—From the beginnings of the common law to the present a normal incident of Judicial power in English and American jurisdiction has been the "general rule of the law that all the judgments, decrees, or other orders of the courts, however conclusive in their character, are under the control of the court which pronounces them during the term at which they are rendered or entered of record, and they may then be set aside, vacated, modified, or annulled by that court." *Bronson* v. *Schulten*, 104 U. S. 410, 415.[9] The older text-writers phrased the rule thus:

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[9] See also *Zimmern* v. *United States*, 298 U. S. 167, 169–170; *United States* v. *Benz*, 282 U. S. 304, 307–308; *Henderson* v. *Carbondale Coal & Coke Co.*, 140 U. S. 25, 40; *Goddard* v. *Ordway*, 101 U. S. 745, 752; *Basset* v. *United States*, 9 Wall. 38, 41; *Doss* v. *Tyack*, 14 How. 297, 312; *Bohlen* v. *Metropolitan Elevated Ry. Co.*, 121 N. Y. 546, 24 N. E. 932 (1890); *In re City of Buffalo*, 78 N. Y. 362 (1879); *Hatch* v. *Central National Bank*, 78 N. Y. 487 (1879); *Balch* v. *Shaw*, 7 Cush. 282 (Mass. 1851); *Department of Public Works & Buildings* v. *Legg*, 374 Ill. 306, 29 N. E. 2d 515 (1940); *State* v. *District Court*, 51 Mont. 310, 152 Pac. 753 (1915); *Moherman* v. *Nickels*, 140 Ohio St. 450, 45 N. E. 2d 405 (1942); *Clendenning* v. *Conrad*, 91 Va. 410, 21 S. E. 818 (1895); *Chessum & Sons* v. *Gordon* [1901] 1 K. B. 694.

> * * * during the terme wherein any judiciall act is done, the record remaineth in the brest of the judges of the court, and in their remembrance, and therefore the roll is alterable during that terme, as the judges shall direct; but when the terme is past, then the record is in the roll, and admitteth no alteration, averment, or proofe to the contrarie.

2 Coke on Littleton (1853 ed.) 260a; see also 3 Blackstone's *Commentaries* (Lewis, 1900 ed.) 407; 1 Bacon's *Abridgement*, Amendment and Jeofail (7th ed.) p. 223. The state courts of Maryland, like other state and federal courts, possess such inherent power. *Eddy* v. *Summers*, 183 Md. 683, 687, 39 A. 2d 812 (1944).[10]

This absolute control of its own judgments by the court during term time must be sharply distinguished from the very limited powers of a court to correct or revoke a judgment after expiration of the term. During the term, the scope of the court's inquiry is as broad as it was prior to entry of the judgment; it has "plenary power" to modify or revoke its judgment "for error of fact or law." *Zimmern* v. *United States*, 298 U. S. 167, 169–170. See also *Doss* v. *Tyack*, 14

[10] See also *North* v. *Town Real Estate Corporation*, 60 A. 2d 665 (Md. 1948); *Harvey* v. *Slacum*, 181 Md. 206, 208, 29 A. 2d 276 (1942); *State* v. *Butler*, 72 Md. 98, 100, 18 A. 1105 (1890); *Craig* v. *Wroth*, 47 Md. 281, 282 (1877); *Seth and Lowe* v. *Chamberlaine*, 41 Md. 186, 194 (1874); *Rutherford* v. *Pope*, 15 Md. 579, 581 (1860); *Robinson* v. *Commissioners*, 12 Md. 132, 141 (1858).

How. 297, 313; *Henderson* v. *Carbondale Coal and Coke Co.*, 140 U. S. 25, 40. Its power is inherent and unquestioned; it is "of every-day practice." *Basset* v. *United States*, 9 Wall. 38, 41. After expiration of the term, on the other hand, a judgment can be modified or vacated, if at all, only for very limited grounds, such as certain types of fraud or mistake of fact. *Bronson* v. *Schulten, supra*; *United States* v. *Mayer*, 235 U. S. 55, 67; see Moore & Rogers, *Federal Relief from Civil Judgments*, 55 Yale Law Journal 623 (1946). The sharpness of the distinction is emphasized by the opinions in *United States* v. *Mayer, supra*, and *Bronson* v. *Schulten, supra*, the leading cases in the federal courts on relief from a judgment after term. In both, the plenary power of a court over its judgments within the term is treated as unquestioned, and the finality of judgments after expiration of the term is treated as equally unquestioned and as subject to only very limited exceptions.

The cases make it clear that any action taken during term time is regarded as merely a continuation of the original proceeding which gave rise to the judgment. The power to vacate the judgment rests in the court because the original proceeding, although culminating in a judgment, has not been terminated so as to give complete finality to the judgment until the expiration of the term of court. Thus in *Goddard* v. *Ordway*, 101 U. S. 745, this Court sustained the power of a

District Court, after an appeal had been allowed, to vacate the order allowing the appeal, set aside the judgment, and give judgment to the other side, and treated the appeal from the second order as the only one before it. Similarly in *Zimmern* v. *United States*, 298 U. S. 167, this Court ruled that an order by the district court during term, stating that it would be necessary to modify the decree, had the effect of suspending the operation of the decree, so that no appeal could be taken until it had been amended or confirmed. This Court said at p. 169, "Until such action had been taken it was no longer a decree at all." To the same effect is *Henderson* v. *Carbondale Coal & Coke Co.*, 140 U. S. 25, 40, where this Court, in upholding the action of the lower court in reversing itself during term time, stated that "where a judgment or decree is set aside at the term at which it is rendered, it is as though it had never been."

The courts of Maryland, where petitioner's naturalization proceeding was brought, likewise draw a sharp distinction between the power of a court over its judgments during the term and the remedies available under Maryland law after term.[11] In Maryland, an order vacating a judg-

[11] Based upon a statutory enlargement (Maryland Act of 1787, c. 9, sec. 6) of the power of courts over their judgments, Maryland courts of record can set aside, even after term, judgments which have been procured through fraud, deceit or any other irregularity warranting relief. *North* v. *Town Real Estate Corp.*, 60 A. 2d 665 (Md. 1948); *Eddy* v. *Sum-*

ment during term time is not an appealable order since it is regarded as merely an interlocutory step in the proceeding leading to a final judgment (*Rutherford* v. *Pope*, 15 Md. 579, 581 (1860);[12] *Craig* v. *Wroth*, 47 Md. 281, 282 (1877); *Harvey* v. *Slacum*, 181 Md. 206, 208, 29 A. 2d 276 (1942)), whereas an order revoking a judgment under Maryland practice after expiration of the term is regarded as final and appealable (*North* v. *Town Real Estate Corporation*, 60 A. 2d 665 (Md. 1948)). On the same theory, that a judgment vacated during term was never really a judgment at all, the Maryland appellate court upheld the power of a lower court in a criminal case to vacate a sentence and dismiss an indictment on demurrer, despite a Maryland statute prohibiting a demurrer to an indictment after judgment (*State* v. *Butler*, 72 Md. 98, 100 (1890)). Thus, it is clear that Maryland courts, like American and English courts generally,[13] regard proceedings as still within the plenary control of the court until the

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mers, 183 Md. 683, 39 A. 2d 812 (1944); *Harvey* v. *Slacum*, 181 Md. 206, 29 A. 2d 276 (1942); *Denton National Bank of Maryland* v. *Lynch*, 155 Md. 333, 142 A. 103 (1928); *Waters* v. *Engle*, 53 Md. 179 (1880); *Smith* v. *Black*, 51 Md. 247 (1879); *Taylor* v. *Sindall*, 34 Md. 38 (1871); *Kemp* v. *Cook*, 18 Md. 130 (1861).

[12] The extent to which such an order is regarded as merely a step in the original proceeding is illustrated by the fact that the *Rutherford* case cites as authority *Ellicott* v. *Eustace*, 6 Md. 506, which held that an order permitting amendment of the pleadings was not an appealable order.

[13] See 1 Freeman, *Judgments* (1925 ed), §§ 194 and 195.

end of the term, with the result that a judgment does not achieve complete finality until the expiration of the term at which it was rendered. The court's control of its judgment during term time is essentially like a petition for rehearing, and is a normal part of the process by which the ultimate judgment is rendered.

So firmly established is the general rule that a court has absolute control over its judgments during term time that a very clear expression of intent to change has been generally deemed necessary to alter or abrogate the rule. Thus, this Court has held that its rule specifying the time within which a petition for rehearing may be filed does not deprive it of jurisdiction to grant an untimely petition within the term of court at which the assailed judgment or order was entered. *Zap* v. *United States*, 330 U. S. 800; *Stone* v. *White*, 301 U. S. 532; *Douglas* v. *Willcuts*, 295 U. S. 722; see Stern & Gressman, *Supreme Court Practice* (1950), pp. 322–326. State courts have similarly held that the mere fixing by statute or rule of a specific time for seeking a rehearing or a new trial does not restrict the court's power to control its judgments during term time.[14]

[14] *City of Hazard* v. *Duff*, 295 Ky. 701, 175 S. W. 2d 357 (1943); *First State Bank, Pineville* v. *Asher*, 273 Ky. 574, 117 S. W. 2d 581 (1938); *Detroit Edison Co.* v. *Hartrick*, 283 Mich. 502, 278 N. W. 664 (1938); *Ritchie* v. *Ritchie*, 173 S. W.

We do not argue that the term rule cannot be changed. The modern trend in many jurisdictions has been to alter the rule, not by abrogating it altogether, but by substituting for the term a fixed period during which the relief formerly available during term may be granted. *Pate* v. *State*, 244 Ala. 396, 14 So. 2d 251 (1943); *Hartford Accident & Indemnity Co.* v. *Sorrells*, 50 Ariz. 90, 69 P. 2d 240 (1937); *Goatman* v. *Fuller*, 191 Cal. 245, 216 Pac. 35 (1923); *Barnard* v. *Michael*, 392 Ill. 130, 63 N. E. 2d 858 (1945); *Hutchinson* v. *Hutchinson*, 293 Ky. 270, 168 S. W. 2d 738 (1943); *Zicarelli* v. *General Finance Co.*, 14 N. J. Misc. 711, 186 A. 726 (1936).

Thus, the significance of the term on the finality of judgments has been abolished in the federal courts. Section 452 of the Judicial Code of 1948 (28 U. S. C. 452) provides that "The continued existence or expiration of a term of court in no way affects the power of the court to do any act or take any proceeding." This provision is derived from Federal ules of Civil Procedure, Rule 6 (c), but is made applicable to all proceedings whether or not civil in nature. See Reviser's Note to § 452. See also Criminal Rule 45 (c). The phrase "continued existence" was added to Civil Rule 6 (c) in 1947 for the express purpose of preventing "reliance upon the continued existence of a term as

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2d 101 (Mo. App. 1943); *Firemen's Fund Ins. Co.* v. *Griffin*, 176 Okla. 94, 54 P. 2d 1032 (1936); *Glasscock* v. *Bryant*, 185 S. W. 2d 595 (Tex. Civ. App. 1944);

a source of power to disturb the finality of a judgment upon grounds other than those stated in these rules." Note of Advisory Committee to amended Rule 6 (c); see Moore's *Federal Practice* (2d ed.), pars. 6.02, 6.09. Accordingly, a federal court now has unlimited power over civil judgments comparable to that existing under the term rule only within the 10 days allowed by Rule 59 for motions for new trial or to alter or amend the judgment. (See also Rules 50 (b), 52 (b)). Compare, as to criminal cases, *United States* v. *Smith*, 331 U. S. 469. Thereafter, its power over its judgments, save for clerical errors (Rule 60 (a)), is limited to the grounds prescribed in Rule 60 (b). Since a motion under Rule 60 (b) "does not affect the finality of a judgment or suspend its operation" (Rule 60 (b)), and can be granted only for limited grounds (*cf. Ackermann* v. *United States*, 340 U. S. 193), it seems apparent that such a motion should be regarded as a substitute for and enlargement of the remedies formerly available after expiration of the term in which the judgment was entered. Compare Moore, *Federal Practice*, Ch. 60; Moore & Rogers, *Federal Relief from Civil Judgments*, 55 Yale Law Journal 623 (1946).

Except in those jurisdictions which have thus replaced it, however, the term rule continued as a normal incident of the judicial process. The power of a court to alter or amend its judgment during term time was firmly established

long before Congress passed the first denaturalization statute in 1906, and the exercise of that power was always deemed a part of the original proceeding. The Maryland courts had such power in 1906 when the first denaturalization statute was passed and in 1943 when petitioner's application for citizenship was heard. Absent a clear expression of contrary intention in the naturalization law, the normal judicial power of the Maryland court to control its judgment during the term would pertain to this naturalization proceeding. We turn, therefore, to the question whether Congress has shown a clear intent to abridge that power.

C. *Neither the language nor the legislative history of the denaturalization statute reveal an intent to alter or abridge the power of the courts to control their judgments while the proceedings are in fieri.*—By Sec. 15 of the Nationality Act of 1906 (34 Stat. 601), which was substantially the same as the present Section 338 of the Nationality Act of 1940, Congress authorized a proceeding for the cancellation of a certificate of naturalization by an independent suit in equity. It imposed upon the United States Attorneys [15] the

[15] The 1906 Act was amended by Act of May 9, 1918 (40 Stat. 544, 8 U. S. C. (1934 ed.) 405) so as to allow institution of suits for cancellation by the Commissioner or Deputy Commissioner of Naturalization. However, the Act of 1940 (54 Stat. 1158, 8 U. S. C. 738 (a)) returned to the original language of the 1906 Act, limiting such authority to the United States Attorneys.

duty to institute such a proceeding in any court having naturalization jurisdiction in the judicial district in which the naturalized citizen may reside at the time of bringing the suit," and provided for service by publication on a prospective defendant "absent from the United States or from the district in which he last had his residence," such notice to be given in accordance with the laws of the state or place where suit is brought. On its face, this provision is concerned solely with the remedies available to revoke a judgment of naturalization which has become final; it has nothing to do with the question when a judgment becomes final. The legislative history sheds very little light on the intended effect of the denaturalization section, for it was merely one part of a general statute which was primarily concerned with revamping the process of naturalization so as to prevent fraud at the outset.

Nefarious practices in the field of naturalization long antedated the movement for reform in this field, which began shortly after the civil war.[16] By 1905 the situation was so bad that the President appointed a special commission to investigate and report on the subject. See H. Rep. 1789, 59th Cong., 1st sess., p. 2. The Commission's report (H. Doc. 46, 59th Cong., 1st sess.) shows that

[16] For a full historical discussion, see Comment, *Pre-Statutory Denaturalization*, 35 Cornell L. Q. 120 (1949).

the commission's primary purpose was to prevent fraud by removing the incentives for fraud. Thus it suggested that fees be raised to make the cost too high for political committees to pay the cost of naturalization (p. 12) and that in large cities only federal courts have the power to naturalize so as to prevent competition for fees (pp. 24–25). It also suggested uniformity in fees and in the wording of the certificate of naturalization and the creation of a central federal bureau to supervise immigration matters (pp. 28–29). While the bill proposed by the majority of the commission contained a provision authorizing proceedings for cancellation of certificates (p. 106), the report made no reference thereto. Appendix D to the report did, however, contain a letter from a Special United States Attorney stating, *inter alia*, that 1916 certificates had been cancelled through civil proceedings in the preceding two-year period (p. 76).

The House Committee which drew up the bill which became the Nationality Act of 1906 had before it the report and draft submitted by the President's Commission (H. Rep. 1789, 59th Cong., 1st sess., pp. 2–3). It referred to the fact that 1916 certificates had been cancelled in civil proceedings (p. 2) and later mentioned that the bill proposed to give the United States power to institute proceedings for cancellation of a certificate (pp. 5–6, 7). It gave no explanation of the pro-

posed scope of such provision. In the debate on the bill, the chairman reported that the section, which as drawn had merely empowered the United States to bring cancellation proceedings, had been changed to make it the duty of the United States attorneys to bring such actions, 40 Cong. Rec. 7874. A member asked if the provisions for cancellation for fraud remained, and the chairman replied "They remain, and under existing law it can be done now, as decided by the Federal courts." 40 Cong. Rec. 7874. That is the extent of Congressional debate on this section.

Under the circumstances, all that can be said is that Congress certainly revealed no clear intention to alter or abridge the established power of courts to control their judgments during term time. The general statements on which petitioner relies, to the effect that the 1906 Act was designed to establish a uniform system of naturalization, must be read in their context. The 1906 Act did provide for more uniformity in naturalization than had theretofore existed. It provided for a central federal bureau to keep records (Sec. 1, 34 Stat. 596); it standardized the form of the petition for naturalization (Sec. 4, 34 Stat. 596–597) and certificate of naturalization (Secs. 3, 27, 34 Stat. 596, 605–606); it defined the duties of clerks of naturalization courts (Secs. 12–14, 34 Stat. 599–601); and regulated procedure

on naturalization hearings (Secs. 6–12, 34 Stat. 598–599).[17]

Nevertheless, it did not change the system, which had been adopted from the beginning of our national government, of using state as well as federal courts to perform the judicial function of naturalization. It did not undertake to regulate the mode of judicial procedure in such state courts except as to matters pertaining di-

[17] The statement of Representative Bonynge, quoted in part by petitioner (Br. 14), establishes no more than this. The full statement is as follows:

Mr. Bonynge. It also provides a uniform procedure from the inception of the application for naturalization until it is consummated in the final issuance of the certificate. It attempts to guard against frauds and crimes that have been committed against our naturalization laws, and prescribes penalties for the commission of such crimes. It establishes a Bureau of Naturalization in Washington, which will be required to keep an accurate record of the naturalization certificates issued throughout the United States, and it authorizes the United States Government, through the United States attorneys, in cases where cause may exist, to oppose a petition for naturalization. It provides a procedure for the cancellation of certificates of naturalization that may be obtained through fraud of any kind. It provides that the alien should live at least one year in the State in which he makes the application for naturalization. It provides that the examination of the alien shall be made in open court, and provides for two witnesses to be examined before the court. Now, that is it, in a general way; I suppose I have omitted some other provisions, and while I did not, perhaps, mention the one, two, three, or four to which the gentleman from New York has referred, it includes those and some others that I have heretofore mentioned.

Mr. Cockran. The gentleman has misapprehended my question. I did not ask what all the features of the bill were,

rectly to the fees, forms, records and hearings on naturalization. In fact, the bill as originally introduced provided for appeals in naturalization cases from all lower courts, state as well as federal, to the federal Circuit Court of Appeals, but this innovation for federal control of state judicial proceedings proved so startling to a number of Congressmen that the proposed section was dropped. 40 Cong. Rec. 3645, 7784–7787. No specific provision for appeal was made in the 1906 Act. Clearly, therefore, the general statements that the act was designed to provide a uniform system of naturalization did not mean that the procedures were intended to be uniform in every detail.

The legislative history set forth above does show that the framers of the 1906 Act and Congress were aware that certificates of naturalization were being cancelled by federal courts without statutory authority before 1906. Most of such suits were apparently by independent suits in equity or by motions in the nature of equitable relief after expiration of the term. *United*

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but how far they modified the requirements and conditions of naturalization—not the procedure of naturalization.

Mr. Boxnyge. The procedure can be put under one head as one feature of the bill. I think that is a very, very important feature; that we should exercise the authority given to us by the Constitution of the United States to establish—to use the exact language of the Constitution—"to establish an uniform rule of naturalization." That this bill does; and I think it is very important [40 Cong. Rec. 3650–3651].

States v. *Norsch*, 42 Fed. 417 (E. D. Mo., 1890); *Tinn* v. *United States District Attorney*, 148 Cal. 773, 84 Pac. 152 (1906). See also *Pintsch Compressing Co.* v. *Bergin*, 84 Fed. 140 (C. C. D. Mass.); *Commonwealth* v. *Paper*, 1 Brews. (Pa.) 263 (1868); *State ex rel. Lacy* v. *Brandhorst*, 156 Mo. 457, 56 S. W. 1094 (1900).[18] Of the few reported decisions only one appears to have involved correction of a judgment in term time. *United States* v. *Kornmehl*, 89 Fed. 10 (D. N. J., 1898). The statements in Congress show clearly that, alarmed by the frauds that had been committed in naturalization cases, the legislature intended by Section 15 of the 1906 Act to remove any doubt as to the power of courts at any time to revoke, for fraud or illegality, naturalization judgments which had become final. But nothing in the legislative history of the section suggests that Congress gave any thought to the inherent power of a court to reconsider its judgments not merely for fraud or illegality but for any reason

[18] See 9 Richardson, A Compilation of the Messages and Papers of the Presidents, 1789–1897 (Wash. 1898), 116, stating that President Harrison informed Congress in 1890 that "the vacation by judicial decrees of fraudulent certificates of naturalization, upon bills in equity filed by the Attorney-General in the circuit court of the United States, is a new application of a familiar equity jurisdiction. Nearly one hundred such decrees have been taken during the year * * *." It is believed that, with the exception of *United States* v. *Norsch*, 42 Fed. 417 (E. D. Mo.), all of these cases have gone unreported.

affecting their correctness, during the term in which they were rendered.[19]

In short, both the text of the Act and its legislative history indicate that Congress was legislating with respect to the remedies available once a judgment of naturalization has, by operation of the ordinary rules, become final. Nothing in the statute or the circumstances attending its adoption suggests that Congress intended to abrogate the usual rules as to when a judgment becomes final. As we have shown in Point B above, the control by a court of its judgment during term is entirely different in scope and in character from the relief available to set aside a final judgment after term. Whatever may be the rule with respect to proceedings to vacate a judgment after term, that rule would not apply to a court's power to control its judgment during the term, for a judgment set aside during the term has, in legal effect, never been a judgment at all. A statute regulating procedure to set aside a final judgment thus does not reach a judgment which has not achieved finality. The power to set aside a judgment during term time is part of the normal judicial process by which the judgment is rendered, and is of the same nature as a petition for

[19] In general, provisions regulating the procedure for vacating judgments after term are construed as not abrogating the unlimited power of a court over its judgments within the term. *First Nat. Bank of Dunkirk* v. *Smith*, 102 Ohio 120, 130 N. E. 502 (1921); *McGinnis* v. *Beatty*, 28 Wyo. 328, 204 Pac. 340 (1922).

rehearing which is accepted as a regular part of the judicial process.

As we have pointed out above, in *Tutun* v. *United States*, 270 U. S. 568, this Court held that a judgment of naturalization is appealable, despite the absence of a statutory provision for appeal, since naturalization is a judicial function and appeal is part of the normal judicial process.[20] That decision also recognized that appeals in proceedings brought in state courts lie to state appellate courts. The decision therefore necessarily has two corollaries; (1) that a judgment of naturalization is not final when rendered but may be negated by a judicial process other than that set forth in Section 338 (a) of the Nationality Act[21]

[20] While the *Tutun* case involved a judgment refusing naturalization, the decision recognized that an appeal by the Government would lie from an order granting citizenship. See 270 U. S. at 577. Appellate courts have repeatedly entertained jurisdiction of appeals from judgments granting naturalization. E.g., *Moser* v. *United States*, 340 U. S. 910; *Estrin* v. *United States*, 80 F. 2d 105 (C. A. 2); *Repouille* v. *United States*, 165 F. 2d 152 (C. A. 2); *United States* v. *Larsen*, 165 F. 2d 433 (C. A. 2); *Daddona* v. *United States*, 170 F. 2d 964 (C. A. 2), certiorari denied, 336 U. S. 961; *In Re Jow Gin*, 175 F. 2d 299 (C. A. 7); *United States* v. *Hrasky*, 240 Ill. 560, 88 N. E. 1031 (1909); *In re Bogunovic*, 106 P. 2d 247 (Cal. App. 1940).

[21] It may be noted that revocation of citizenship may be effected under the Nationality Act of 1940 without resort to equity proceedings under Sec. 338 (a). Under Section 338 (e) revocation is mandatory upon criminal conviction for knowingly procuring naturalization in violation of law. Under Section 704, naturalization granted under Secs. 701 and 702 to persons serving in the armed forces may be revoked upon the subsequent dishonorable discharge of such naturalized person.

and, indeed, by a judicial proceeding not specified in the Act at all; and (2) that the procedure by which such result may be achieved may vary with the forum selected for naturalization. In so holding, the Court expressly rejected an argument that the provision for denaturalization in Section 15 (now Section 338) of the Act precluded vacation of a naturalization judgment by the ordinary processes of appeal. It said (270 U. S. at 579):

> It is also argued that Congress manifested the intention of denying the usual method of appellate review by providing in § 15 for a bill in equity to cancel certificates of citizenship. The remedy afforded to the Government by § 15 is narrower in scope than the review commonly afforded by appellate courts. Moreover, there is no corresponding provision which would afford to the applicant for citizenship an independent remedy for correcting errors committed in the district court.

The *Tutun* case therefore answers any argument against recognition of the term rule on the ground that the denaturalization statute represents the only possible way in which a judgment once rendered may be set aside.[22]

[22] The basic assumptions of the decision in *United States ex rel. Volpe* v. *Jordan*, 161 F. 2d 390 (C. A. 7), on which petitioner relies, are that a judgment of citizenship becomes final the moment it is issued and that procedure for naturalization and denaturalization must be wholly uniform in state and federal courts (see 161 F. 2d at p. 395). As pointed out above, the *Tutun* decision necessarily implies a holding to

The *Tutun* case also answers any argument of policy based on the fact that, by recognition of the term rule, the period during which a naturalization judgment cannot be deemed completely final would vary in different jurisdictions depending upon the length of the term. The time for appeal may vary from state to state just as the term rule may vary from state to state. Such differences of procedure are an inevitable result of our federal system and the Congressional decision to utilize state as well as federal courts for naturalization. In fact Section 338 itself provides for varying procedures by specifying that notice by publication shall be given in accordance with the laws of the state or place where suit is brought. The fact remains that the court's control of its judgment in term time is as established a part of the judicial process as the right of appeal. Since this Court has held that the right of appeal exists despite the considered decision of Congress not to provide therefor in the statute, it necessarily follows that the equally well established right of a court to control its judgment during the term must be deemed to have continued where the legislative history shows that Congress did not even consider the possibil-

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the contrary on both points. The particular aspect of the *Volpe* decision which is in conflict with the decision below was not decisive of the ultimate issue in the case, for even if the power to revoke had been recognized, there was an issue as to whether *Volpe* had received notice of revocation. 161 F. 2d at p. 396.

ity of legislating with respect thereto. Since there is no evidence of any Congressional intention to alter or abridge the term rule, the reasoning of the *Tutun* decision requires a holding that the court's established power to control its judgment during term time was unaffected by the Nationality Act.

II

THE PROCEEDINGS IN THE STATE COURT ARE NOT SUBJECT TO ATTACK AS VIOLATING DUE PROCESS.

Petitioner also asserts that, assuming a state court has power within the same term of court to reconsider a judgment of naturalization, the particular proceedings here followed were violative of due process. It is elementary that the state court's judgment is subject to collateral attack in federal court only for lack of jurisdiction. *Spratt* v. *Spratt*, 4 Pet. 393. Here the state court had jurisdiction of the parties and the proceeding. Petitioner was notified and was present at a hearing in open court. Accordingly, any contention that those proceedings were improper should have been made in the Maryland courts and cannot be made on collateral attack.

In any event, however, the state court proceedings did not violate any constitutional right of petitioner. As we have seen, the state court had full authority in accordance with ordinary judicial procedure, upon a showing that there was additional evidence which it should consider, to vacate its initial order and set the matter down

for further hearing. Once that order had been vacated, the matter stood as if it had never been entered (see p. 23, *supra*), and the court could properly proceed as on an original application for naturalization. So treating the proceeding, it is clear that the court not only did not deny due process, but acted in full conformity with the naturalization statutes. There is no constitutional requirement that naturalization be granted or denied by judicial procedure. *Tutun* v. *United States, supra,* 576–7. The Nationality Act merely requires (except in cases where there has been a preliminary hearing by a naturalization examiner) that the court hold a hearing in open court at which the witnesses are examined under oath in the presence of the court. § 334 (a). There is no requirement of advance notice to either party of such a hearing; section 324 plainly contemplates a hearing on the same day on which the application is filed.[23] Indeed, the hearing on December 9, 1943, on the basis of which the court denied naturalization, appears to have been considerably less summary than the initial hearing on December 2 (see pp. 3–8, *supra*).[24]

[23] The requirement of § 334 (c) that the hearing be held not less than 30 days after filing of the petition is inapplicable here (see note 2, p. 4, *supra*); in any event that requirement, imposed for the benefit of the United States, does not specify any particular form or time for notice of a hearing.

[24] In the foregoing discussion, we have construed the judgment of the Maryland court as a judgment denying naturalization. In effect, what the court did was to set aside its

Since a proceeding for naturalization is civil in nature, the applicant has no constitutional right either to have counsel supplied or to have the court ask him whether he desires counsel. Cf. *Brown* v. *Johnston*, 91 F. 2d 370, 372 (C. A. 9), certiorari denied, 302 U. S. 728; *Hodge* v. *Huff*, 140 F. 2d 686, 689 (C. A. D. C.), certiorari denied, 322 U. S. 733. "Most petitioners appear in court without counsel." *In re Jow Gin*, 175 F. 2d 299, 303 (C. A. 7). Petitioner had the burden of proving his eligibility for naturalization. *Estrin* v. *United States*, 80 F. 2d 105 (C. A. 2); *Petition of Zele*, 127 F. 2d 578, 580 (C. A. 2); *Lakebo* v. *Carr*, 111 F. 2d 732, 734 (C. A. 9). Since naturalization is a privilege, doubts must be resolved in favor of the United States; the court must be "satisfied that the test of allegiance has been met". *Baumgartner* v. *United States*, 322 U. S. 665, 675; cf. *United States* v. *Manzi*, 276 U. S. 463, 467. Plainly, on the evidence before

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prior order, to restore the case on the calendar for immediate hearing, and upon such hearing to hold that petitioner was not entitled to receive a certificate of naturalization. (See R. 19–20.) In other words, the court considered the same evidence both on the question whether the prior order should be vacated and on the final disposition of the cause—a practice which is common on applications for rehearing or new trial.

If we should be wrong in thus regarding the judgment as a final disposition of petitioner's application, petitioner would have even less reason to complain since, on that view, he would have had further opportunity to attempt to persuade the Maryland court of his eligibility for naturalization.

it, the Maryland court could hold that petitioner had failed to satisfy that burden.

We find no warrant in the record before the Maryland court for suggestion that petitioner was denied opportunity to present his case. Petitioner made no request for postponement or continuance of the hearing or for opportunity to obtain and confer with counsel. He frankly admitted that he had testified falsely at the first hearing as to his approval of our form of government (R. 19) and that he was unwilling to fight for the United States (R. 18). He did so deliberately, on the basis of the way he had felt "for several weeks" (R. 18), and with full recognition that "if I don't want to fight for this country I can't expect to remain in this country" (R. 18). His testimony was in effect an abandonment of his naturalization application, and he recognized it as such. That he may subsequently have regretted his deliberate choice would not, even under the liberal standards of Rule 60 (b) of the Federal Rules of Civil Procedure, have afforded a basis for an application to the court rendering the judgment to vacate it after a lapse of 4½ years. Compare *Ackermann* v. *United States*, 340 U. S. 193; *United States* v. *Borchers*, 163 F. 2d 347 (C. A. 2); *United States* v. *Eichenlaub*, 180 F. 2d 314 (C. A. 2), certiorari denied, 339 U. S. 983; *United States* v. *Willumeit*, decided February 23, 1950 (C. A. 7), certiorari denied, 340 U. S. 834; *United States* v. *Klapprott*, 9 F. R. D. 282

(D. N. J.), affirmed, 183 F. 2d 474 (C. A. 3). *A fortiori,* the validity of the state court proceeding is not open to collateral attack in a federal court.

CONCLUSION

The power of the court to control its judgments during the term is a long-standing recognized part of the normal judicial process which will not be deemed abrogated without clear expression of legislative intent to effect a change. Since neither the language nor the legislative history of the denaturalization statute reveal an intent to alter or abridge the term rule, the Maryland court had authority to exercise that power with relation to the judicial proceeding for naturalization. The judgment below should accordingly be affirmed.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
JAMES M. MCINERNEY,
Assistant Attorney General.
JAMES L. MORRISSON,
Special Assistant to the Attorney General.
BEATRICE ROSENBERG,
EDWARD S. SZUKELEWICZ,
Attorneys.

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